

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION II

CA08-314

November 12, 2008

TONY RAMOS
APPELLANT

AN APPEAL FROM FAULKNER
COUNTY CIRCUIT COURT
[JV2007-367]

V.

HON. RHONDA WOOD, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

This is an appeal from a delinquency adjudication. Tony Ramos appeals, but does not challenge the adjudication itself. Rather, he argues that the circuit court erred in determining that he is at risk to continue re-offending and that he acted in a sexually predatory manner for close to ten years with more than one victim. He asks this court to remand for the entry of an amended order. Because appellant failed to preserve his argument for appellate review, we affirm the delinquency adjudication.

The State filed a delinquency petition against fifteen-year-old appellant, asserting that he committed three counts of rape, in violation of Ark. Code Ann. § 5-14-103 (Supp. 2007). Through the testimony of the victim, the State proved that appellant committed two counts of rape against the same victim, his six-year-old cousin. Additionally, the victim's two sisters

testified that appellant had sexually abused them in the past.

At the close of the hearing, the court informed appellant, “You will be committed to DYS [Division of Youth Services] for sexual-offender treatment. They’ll put you through a program....You’ll get an ASAP assessment and follow the recommendations, including this Court’s review of the assessment.”

The court subsequently entered a commitment order, finding that appellant is a delinquent juvenile, pursuant to Ark. Code Ann. § 9-27-303(15)(A) (Repl. 2008), based on the two rape allegations.¹ Thereafter, the court entered a “delinquency adjudication & DYS commitment order.” In this order, the court reiterated its delinquency adjudication and stated that appellant needs sex-offender treatment, including an ASAP assessment.

The instant appeal arises from the court’s further findings:

Juvenile is at risk to continue re-offending. Testimony at the trial including two other girls’ testimony as to the Juvenile’s sexual contact which could have been additional rape charges had the statute of limitation not ran [sic]. Therefore, the Court finds the juvenile has acted in a sexual[ly] predatory manner for close to 10 years with more than one victim.

Appellant now appeals, claiming that there was no evidence presented from which the circuit judge could have concluded that he was at risk to re-offend, or that he acted in a sexually predatory manner for close to ten years with more than one victim.

Appellant concedes that Ark. R. Crim. P. 33.1(b) requires a defendant in a bench trial

¹Section 9-27-303(15)(A) defines “delinquent juvenile” as any juvenile who is ten years old or older, and who has committed an act other than a traffic offense or game and fish violation that, if the act had been committed by an adult, would subject the adult to prosecution for a felony, misdemeanor, or violation under the applicable criminal laws of this state or who has violated § 5-73-119.

to challenge the sufficiency of the evidence at the close of all of the evidence, or such a challenge is waived.² He further concedes that, during the hearing, he did not challenge the sufficiency of the evidence supporting his delinquency determination. Nonetheless, he urges appellate review of his arguments and claims that he could not have objected at the hearing because the issues of whether he is at risk of re-offending and acted in a sexually predatory manner were not litigated during the hearing, and were raised for the first time in the court's delinquency adjudication and commitment order. As such, appellant argues that he "cannot reasonably be expected to challenge the sufficiency of the evidence not presented at trial."

Appellant is wrong, as he should have raised his arguments to the circuit court in a post-trial motion, instead of raising them for the first time on appeal. *See, e.g., Walker v. State*, 330 Ark. 652, 955 S.W.2d 905 (1997) (refusing to address the juvenile's claim of ineffective assistance of counsel where he failed to file a post-trial motion raising the issue to the circuit court). Appellant had ample opportunity to raise the issue to the circuit court – he was placed on notice that the court would make further recommendations by the governing law, by the circuit court's oral findings, and by its first order.

The circuit court ordered appellant to be committed to a youth-services center, using the risk-assessment system authorized by law. *See Ark. Code Ann. § 9-27-330(a)(1)(B)(i)* (Repl. 2008). When ordering such a placement, a circuit court is expected to make recommendations concerning the offender's treatment, which are then reviewed by DYS. *See Ark. Code Ann. § 9-27-330(a)(1)(B)(iv)*. Additionally, when a juvenile is adjudicated as

²The Arkansas Rules of Criminal Procedure apply to juvenile-delinquency proceedings. Ark. Code Ann. § 9-27-325(f) (Repl. 2008).

a delinquent for committing the offense of rape, the court shall order a sex-offender screening and risk assessment. *See* Ark. Code Ann. § 9-27-356(a)(1) (Repl. 2008).

Thus, the day of the hearing, the court orally ruled that appellant would “get an ASAP assessment and *follow the recommendations, including this Court’s review of the assessment.*” (Emphasis added.) These findings were reiterated in the commitment order, which was entered on the same day that the hearing was held. The commitment order specified appellant’s commitment to DYS for sex-offender treatment and further specified “ASAP assessment and follow the recommendation including Court’s review of recommendations.”

Only eight days after the hearing, the court made the more specific recommendations in its delinquency adjudication and DYS commitment order, to which appellant now objects. While appellant asserts that this second order was entered without notice to him or his counsel, he does not explain why he would not have had access to the case file. In short, appellant fails to persuade that his arguments are preserved for appellate review. Hence, we summarily affirm the findings supporting appellant’s delinquency adjudication.

Moreover, we would affirm if we were to reach the merits of appellant’s arguments, because substantial evidence, viewed in the light most favorable to the State’s proof, supported the adjudication determination. *See Hunter v. State*, 341 Ark. 665, 19 S.W.3d 607 (2000). Appellant argues that no evidence supports the circuit court’s findings that he is at risk to re-offend and that he has acted in a sexually predatory manner for close to ten years with more than one victim.

To the contrary, the testimony of the three victims supports that, during the past nine

or ten years, appellant has sexually abused or raped three family members. Two victims testified that they were approximately six years old when the abuse occurred. The third victim, who was only thirteen, testified that the abuse occurred “a long time ago.” This constitutes sufficient proof that appellant is likely to re-offend, as he is already a repeat offender. *See Simmons v. State*, 278 Ark. 305, 645 S.W.2d 680 (1983) (recognizing the inherent proclivity of persons who sexually abuse minors to repeat such acts with multiple victims).

Further, the evidence supports that appellant acted in a “predatory” manner toward his victims. The term “predatory,” as defined under the Sex Offender Registration Act, describes an act directed at a person with whom a relationship has been established or promoted for the primary purpose of victimization of that person or individuals over whom that person has control. Ark. Code Ann. § 12-12-903(9) (Supp. 2007). As a juvenile may be required to register as a sex offender, *see* Ark. Code Ann. § 9-27-356(b)(2), the definition of “predatory” may apply to a juvenile offender who has committed sexual offenses.

Here, appellant’s relationship to the victims was well established – he was their cousin, he lived within walking distance of their home, and they visited his home. Appellant used this relationship to exercise control over his cousins and to victimize them. Appellant’s control over his victims is demonstrated by the testimony that two victims were abused at appellant’s house, and he threatened the third with a gun. Thus, the fact that appellant repeatedly used his position as a family member to abuse his younger cousins supports that he engages in predatory behavior.

Affirmed.

BIRD and GLOVER, JJ., agree.